December 6, 2012

MICHIGAN HOUSE OF REPRESENTATIVES
Judiciary Committee

S.B. 694 and S.B 1303

TESTIMONY OF DONALD N. DUQUETTE IN OPPOSITION

Good morning. . I am Clinical Professor of Law at the University of Michigan Law School where I direct the Child Advocacy Law Clinic.

Child welfare law, the law of child abuse and neglect and children in foster care, is my specialty. Our Child Advocacy Law Clinic, started in 1976, is the oldest such law school clinic in America. Student attorneys under the close supervision of clinical faculty represent children, parents and the county prosecutor's office in separate Michigan counties within driving distance of Ann Arbor. We think this representation of the various parties in these difficult child welfare cases give us some additional objectivity in addressing the policy issues. We are not ideological advocates for one side or another. We just want to see a well-functioning system that will best serve children and their families.

I testify against these bills today because I am concerned they will result in unintended and negative consequences to children and families. I ask that you NOT pass these bills.

In proposing that the court would have jurisdiction over children whose home environment "WILL BE" unfit, SB 694 is plainly unconstitutional, void for vagueness. A reasonable person would not be able to determine what behavior was prohibited. And there would be no limit to the court's ability to exercise jurisdiction. This vague and nearly unlimited jurisdiction would impose a burden on parents and families but also on judges and courts trying to budget and control dockets. The over-breadth of the language would not result in a commensurate trade-off benefit to children.

In fact, the breadth of the language "will be unfit" could cause considerable unintended mischief in families where a parent is able to adequately protect children with the intervention (or interference) of the court and state child protective services. The over-broad language might invite court jurisdiction in domestic violence cases and in other situations where the parent is perfectly capable of protecting the children. And we should give parents the first opportunity to keep their children from harm.

I am concerned about expanding the mandate of the family/juvenile courts and the child protective services of the department of human services. They have a huge job to do with many challenges. It is all they can do to effectively intervene where children are actually at risk. To extend their mandate to reach cases where it is *anticipated* that children would be in danger would be a very undesirable "mission creep".

Unlike the "will be unfit" language, the definition of "criminality" in the bill is not such a negative thing -- it is just unnecessary. The definition offered here is the current law of our state. (In re MU, 264 Mich. App. 270 (2004)) It is well accepted and well established in practice. Since there is no problem, why pass further legislation? If it ain't broke, don't fix it." It is always possible the a court could interpret the fact that the legislature added language as an indication that you are unhappy with the current law as reflected in the court of appeals rulings.

Finally, I think you should be cautious before passing legislation to respond to a single case -- unless it is very clear that legislation is the only remedy for the problem. I think the proponents from Alger County had other remedies, including additional investigation and careful drafting of a petition to show harm to the children – if indeed there was harm to the children. If there was no risk of harm to the children, that is, nothing to protect them from, then the child protection court process should not be involved anyway.

I respectfully recommend that you not pass these bills.

Thank you.

Donald N. Duquette
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